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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE 359th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the second periodic report of Croatia (CAT/C/33/Add.4)

1. At the invitation of the Chairman, the delegation of Croatia resumed places at the Committee table.

2. The CHAIRMAN invited Mr. Silva Henriques Gaspar, rapporteur for Croatia, to read out the conclusions and recommendations adopted by the Committee concerning Croatia's report.

3. Mr. SILVA HENRIQUES GASPAR (Rapporteur for Croatia) read out, in French, the following text:

"A. Introduction

Croatia accepted the Convention against Torture by succession and recognized the competence of the Committee to receive complaints, as provided for in articles 21 and 22 of the Convention, on 8 October 1991. Croatia has also been a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 1997.

The Committee notes with satisfaction that the second periodic report complies with the general guidelines for periodic reports prepared by the Committee. Although it was submitted a year and a half late, the report demonstrates the State party's willingness to cooperate with the Committee in order to fulfil its obligations under the Convention.

B. Positive aspects

Croatia has incorporated the crime of torture and acts constituting other inhuman, cruel or degrading treatment or punishment into its internal legislation in terms which are in keeping with the provisions of articles 4 and 16 of the Convention, since they make these offences punishable by appropriate penalties which take into account their grave nature.

There have been some changes in the rules of criminal procedure, such as the introduction of the obligation to bring detainees before a judge within 24 hours so that a decision may be taken on the lawfulness of detention and the determination of the maximum time-limits for pre-trial detention.

C. Subjects of concern

The Committee notes that the Amnesty Act adopted in 1996 is applicable to a number of offences characterized as acts of torture or other inhuman, cruel or degrading treatment or punishment within the meaning of the Convention.

The Committee is seriously concerned about allegations of ill-treatment and torture, some of which resulted in death and are attributable to law-enforcement officials, especially the police.

The Committee is concerned about the incompetence revealed in investigations of cases of serious violations of the Convention, including deaths which have not yet been explained. It is also concerned about the lack of a sufficiently detailed report, which was to be prepared on the basis of the recommendations made following the consideration of the initial report.

D. Recommendations

As during the consideration of the initial report, the Committee recommends that the State party should make all necessary efforts to ensure that the competent authorities immediately conduct an impartial, appropriate and full investigation whenever they have to deal with allegations of serious violations made in a credible manner by NGOs.

The Committee also recommends that, through the intermediary of the competent authorities, the State party should take account of the evidence transmitted to it by the International Criminal Tribunal for the Former Yugoslavia and some NGOs concerning violations of human rights and, in particular, cases of torture or other inhuman, cruel or degrading treatment or punishment.

The Committee recommends that constitutional complaints should be received directly by the Constitutional Court in all cases of allegations of torture or other inhuman, cruel or degrading treatment or punishment."

4. The delegation of Croatia withdrew.

The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Second periodic report of Tunisia (continued) (CAT/C/20/Add.7)

5. At the invitation of the Chairman, the delegation of Tunisia resumed places at the Committee table.

6. The CHAIRMAN invited the delegation of Tunisia to respond to the questions raised by members of the Committee at the previous meeting.

7. Mr. MORJANE (Tunisia) thanked the Chairman for his welcome and the members of the Committee for their kind words concerning his country's report. His delegation would try to answer the Committee's numerous, varied and precise questions as fully as possible, in the order in which they had been put.

8. Mr. LESSIR (Tunisia) said, with regard to the question why his country's report had been submitted late, that Tunisia had ratified all the international human rights treaties and attached great importance to fulfilling all its consequent obligations, including those relating to the

submission of periodic reports. Compiling those numerous reports, which was done simultaneously, was an arduous, complex and lengthy task requiring in particular extensive cooperation between several ministries.

9. Mention might be made in that regard of the independent expert's report of March 1997 to the Commission on Human Rights on enhancing the long-term effectiveness of the United Nations human rights treaty system (E/CN.4/1997/74), which had shown that many States parties' periodic reports were significantly overdue. The situation was worsening, the number of overdue reports having risen from 38 in 1993 to 67 in 1996. In citing that document, his delegation was not seeking to exonerate itself, but to demonstrate that the requirement of regularly submitting reports to several human rights monitoring bodies entailed a workload that for many States was very hard to bear. The solution might be to amend reporting procedures so that States could, for example, submit a small number of very full reports covering all or several of the treaties. That would greatly ease the burden of preparing periodic reports.

10. Mr. NAJI (Tunisia) said, with regard to the legal status of the code of conduct drawn up by the Ministry of the Interior, that police officers undertook in writing to respect human rights and freedoms and had to know all the relevant national and international human rights provisions. Those who breached the guidelines were liable to be severely disciplined. The guidelines were based on a variety of provisions of the Convention against Torture, which, like all other international instruments incorporated in Tunisian law, took precedence over the domestic legislation. They also had an educational role.

11. Regarding doctors' behaviour towards detainees in prisons, medical staff were bound, on pain of disciplinary measures and penalties, to respect the Code of Medical Ethics protecting prisoners. In addition, there were special training courses, seminars or symposia for heads of prison medical services.

12. Mr. KHEMAKHEM (Tunisia) said that there had been no written restriction on the duration of police custody until, in November 1987, article 13 of the Code of Criminal Procedure had been amended to set a limit of 4 days extensible, subject to approval by the Public Procurator, to a maximum of 10 days (CAT/C/20/Add.7, para. 23). Tunisia had instituted, and intended to pursue, a policy of gradually reducing the duration of pre-trial detention. Until 1987, a suspect could be held for two and a half years before being tried. The amendment of article 85 of the Penal Code in 1987 had cut the length of pre-trial detention to 6 months, with the possibility of extensions to 12 months for ordinary offences and 18 months for serious offences. Since 1993, the maximum duration of pre-trial detention, inclusive of extensions, had been 10 months for ordinary offences and 14 months for serious offences (ibid., paras. 27 and 29).

13. Mr. CHERIF (Tunisia) acknowledged that there was no definition of torture as such in his country's Penal Code and that the term "torture" did not appear in Tunisian law. Tunisia had, however, ratified the Convention against Torture - which, pursuant to article 32 of the Constitution, took precedence over domestic law - and it was, therefore, able in practice to apply the definition of torture contained in article 1 of the Convention.

14. A question had been raised concerning article 101 of the Penal Code, which provided for penalties for public officials who in, or in connection with the exercise of their duties, used violence or caused it to be used against anyone. The French text of that article, but not its Arabic counterpart, erroneously contained an expression equivalent to "without just cause". What the article actually recognized to public officials was not a right to torture, but a right of self-defence in the event of need. In any event, the problem of wording had no practical repercussions, since whenever necessary Tunisian courts based themselves on the Convention against Torture, which formed part of domestic law.

15. Mr. MORJANE (Tunisia) said that the Driss Commission had found that a total of 116 police officers had been involved in 105 cases of abuse of various kinds. Of the total, 55 had been found guilty and sentenced.

16. Mr. BEN CHEIKH (Tunisia) said that the Tunisian bar act did not permit action by a person's counsel while the client was in police custody. Other than before certain administrative or judicial authorities, suspects in police custody could not be represented by a lawyer until they had been indicted. Thereafter the lawyer could defend them during the investigation and the trial. The lawyer's rights of defence and action were safeguarded by law. Once the case file had been submitted to the public prosecutor's office, the accused could appoint one or more lawyers for his defence and was entitled to refuse to answer questions unless they were present. In criminal cases, representation by counsel was mandatory and the court would therefore appoint a lawyer if the accused did not.

17. Mr. KHEMAKHEM (Tunisia) said that, while no law expressly required the declaration of the identity of the person making an arrest, the identity of the official who ordered an arrest must be clearly stated in the record of the preliminary investigation; that was a requirement of articles 13 bis and 155 of the Code of Criminal Procedure, which had to be strictly adhered to. The judge therefore knew, as he must, who the official in question was.

18. Mr. CHERIF (Tunisia) said that, except as otherwise provided by international conventions, and in particular the Convention against Torture, extradition was governed by chapter 8 of the Code of Criminal Procedure. The Convention stipulated that offenders could not be extradited to their home countries if they were in danger of being tortured there, and Tunisian courts refused extradition in such cases. Extradition was also refused when it was sought for political offences. Extradition requests were heard by the Indictment Division of the Tunis Court of Appeal. That reliance on a body in the capital was not intended to cause problems for aliens, but, on the contrary, to simplify matters, since extradition decisions were taken in conjunction with the Ministries of Foreign Affairs and of Justice, which were in Tunis. The body which sat on extradition requests comprised the President of the Indictment Division and two appeal court judges.

19. Mr. KHEMAKHEM (Tunisia), observing that a member of the Committee had described the penalties laid down for minor and serious violence as disproportionate, said that the rules in question involved no real contradiction. The Penal Code (art. 319 and arts. 218 et seq.) recognized three levels of violence depending on the injury caused. The penalty was

proportional to the offence, varying, for example, according to whether the victim had been incapacitated for a week or more, there had been premeditation or the violence had been directed against a relative or had caused death.

20. Mr. BEN CHEIKH (Tunisia) said, on the question whether the Tunisian authorities informed the authorities of other countries when their nationals were facing extradition, that the international and/or bilateral conventions and agreements that Tunisia had ratified made it obligatory to inform the State concerned in such circumstances. The responsibility for providing the information lay with the Criminal Affairs Department of the Ministry of Justice; it notified the other State, through the Ministry of Foreign Affairs, of the offence committed by its national and of the action to be taken against the offender. Likewise, diplomatic missions were kept informed of the arrest of their nationals and of the proceedings against them. Judicial cooperation with other States was, by and large, excellent.

21. Mr. CHERIF (Tunisia) said, with regard to the guarantees of fair treatment available to prisoners released after serving a sentence, that Tunisian law, which was consistent in that respect with the human rights treaties that his country had ratified, especially the International Covenant on Civil and Political Rights, guaranteed a convicted person equality before the courts with all other citizens. Even when serving a sentence, an offender could be paroled, amnestied or granted a partial or full pardon. All convictions were, of course, entered in the judicial record. Since November 1993, however, offenders who had not again broken the law automatically had all their civil rights restored on completion of their sentence; they did not have to petition for that, and their criminal record was expunged. Tunisia prided itself on being one of the few countries in the world to have such a rule.

22. Mr. NAJI (Tunisia) confirmed that the Basic Principles on the Role of Lawyers contained in the guide referred to in paragraph 80 of the report were the principles adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and that they were observed and applied in Tunisia. Law-enforcement personnel, especially prison officers, were in constant contact with lawyers and it had been deemed necessary to acquaint them with the guarantees available to lawyers so that they did not display towards such persons attitudes contrary to human rights. The guide supplemented penal establishments' usual regulations.

23. Mr. MORJANE (Tunisia) added that the text of the Principles, which could be very useful for all law-enforcement officials, had been distributed to police schools and the national guard. It had not been translated into Arabic. It would also be used by the relevant departments of the Ministry of the Interior.

24. Mr. KHEMAKHEM (Tunisia) said, with reference to the non-inclusion in the code of conduct distributed to the police of the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors, that there were in Tunisia numerous channels whereby international instruments could be disseminated. In 1993, a new organ, the Centre for Legal and Judicial Studies, had been established within the Ministry of the Interior. It carried out a wide range of studies and research and helped to bring new international standards to the attention of law-enforcement officials, lawyers, jurists and other people working in the field of law. A work

entitled "Justice in Tunisia described a variety of international human rights instruments, including the United Nations rules for crime prevention and the treatment of prisoners, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers. A new culture of justice and law was emerging in Tunisia. All categories of judicial officer had gradually to become accustomed to applying international instruments and United Nations standards that were new for Tunisia, including instruments such as the Convention against Torture, which, as had been said, were now law. Intensive efforts were being made to propagate the new culture and to apply the international rules. That was something really new for Tunisia.

25. The Centre for Legal and Judicial Studies intended to publish for the fiftieth anniversary of the Universal Declaration of Human Rights a compendium of articles on human rights and international standards and instruments. The Committee's wishes would be taken into account in compiling it.

26. The Committee had expressed concern at the duration of police custody and the hope that, in its efforts to promote human rights, the Government would reduce it. The Tunisian authorities would be informed of that hope. It should be borne in mind that it was a feature of the Government's policy of gradual improvement to avoid sudden changes that society would have trouble in absorbing. Four days was, indeed, quite a long period, especially given the possibility of extension, but it should be seen as a stage in a lengthy process.

27. The question had been asked when law-enforcement officials had to notify the judicial authorities that a person had been taken into police custody. It was true that there was no rule about that in the Code of Criminal Procedure. However, the officials in question worked closely with the Public Prosecutor, who had, by law, to be informed immediately of any offence and of the attendant circumstances and could not, therefore, be unaware of any instance of police custody.

28. Mr. MORJANE (Tunisia) announced that Mr. Ben Cheikh would attempt to answer a question that had been raised about a report by the International Federation of Human Rights (FIDH), although his delegation had obviously not had time to study that document.

29. Mr. BEN CHEIKH (Tunisia) said that the commissions rogatory mentioned in the FIDH report were issued to law-enforcement officials by the examining judge when the latter was not personally able to question the suspect. The procedure was laid down in detail in the Penal Code: each law-enforcement official concerned was assigned a specific task and the examining judge continuously monitored performance so that there could be no question of a law-enforcement official exceeding his authority.

30. Mr. NAJI (Tunisia) said with regard to medical examination of detainees that article 13 bis of the Code of Criminal Procedure provided that such examination must be made when requested by a detainee or one of his relatives. The request could be made at any time and must be entered in the record.

31. The Code of Criminal Procedure said nothing about procedure for selecting the doctor, thereby implying that the requesters could suggest a

doctor of their own choosing, in which event they would be liable for the costs incurred. Should they not suggest anyone, the authorities could select a hospital doctor.

32. Mr. CHERIF (Tunisia) pointed out that the making of a medical examination was not automatic, but contingent on a request. If such a request was refused, the detainee could, on the evidence of the record, bring an action against the official responsible for that breach of his rights, who would then be liable to disciplinary penalties and prosecution. Failure to enter a request in the record rendered the latter invalid and precluded its use in the proceedings, for the Penal Code provided that any document not drawn up according to the rules of procedure and law was void. In the past many records had in fact been declared void on the ground of unlawful preparation. In the final analysis, however, the best way of ensuring observance of the rights of detainees and of citizens in general was to propagate a culture of human rights among public servants; that was a lengthy task.

33. Mr. KHEMAKHEM (Tunisia) said that it was by mistake that the Public Prosecutor had been omitted from the list in paragraph 117 of the report of bodies responsible for the investigations referred to in article 12 of the Convention: article 10 of the Code of Criminal Procedure provided that in criminal cases protection was afforded under the authority of the advocates-general in each court of appeal, public prosecutors and their deputies, cantonal judges, police superintendents, police officers and officers-in-charge of police stations, and sheikhs and certain administration officials. It was worth dwelling on public prosecutors' supervisory role. The Code of Criminal Procedure dealt with its purely legal aspects. It was public prosecutors who, in particular, gave written permission for the extension of police custody; if a law-enforcement official extended such custody without notifying a prosecutor, the latter could institute criminal proceedings against him for abusive restraint. Similarly, if an examining magistrate extended pre-trial detention without a prosecutor's approval, the latter could contest his decision. In addition to authorizing such pre-trial supervision of compliance with the law the Code of Criminal Procedure entitled prosecutors to monitor the conduct of proceedings and to appeal to higher courts after them. As Tunisia did not have officials specially designated to oversee the application of sentences, it was in practice public prosecutors who fulfilled that function. Application of sentences was another area where the Government was pursuing a gradual approach. In December 1995 it had appointed officials to oversee the application of sentences against young offenders. Provision had recently been made for alternative penalties in certain cases, and other, similar measures might follow.

34. Mr. MORJANE (Tunisia) said, with reference to the request made in connection with article 12 of the Convention for statistics relating to the abuses mentioned in paragraph 120 of the report (CAT/C/20/Add.7), that his delegation had been unable to obtain figures concerning disciplinary measures. Regarding criminal penalties, a publication of the Committee on Human Rights and Fundamental Freedoms showed that prosecutions of police or national guard officers between 1 January 1998 and 31 March 1995 had numbered 305, including 277 for misfeasance, and that the penalties imposed had ranged from fines to several years' imprisonment. By category, the offences had included: use of violence to obtain confessions (5 cases); unjustified use of violence in the discharge of official functions (127); physical or verbal abuse (74);

infringement of personal freedom and violation of domicile (7); other forms of abuse of authority (62). The number of such cases had diminished: in 1994, there had been only 38 of them.

35. Mr. CHERIF (Tunisia) said, with regard to the question concerning paragraphs 132-135 of the report whether the liability for inadmissibility had not deterred potential plaintiffs from bringing actions, that individuals could bring criminal identification proceedings in two ways: jointly with the office of the public prosecutor if that official felt the matter warranted action, or personally if certain legal conditions were met. The action could be declared inadmissible on procedural grounds if the plaintiff did not meet those conditions or inadmissible on grounds of substance. If the action was dismissed, the plaintiff could be held to account: if only in order to discourage the filing of frivolous complaints, anyone unjustifiably bringing such an action was liable under article 46 of the Code of Criminal Procedure to a fine of 50 dinars, without prejudice to criminal prosecution for false accusation. The law thus had a twofold aim: to protect plaintiffs and to prevent excesses.

36. Mr. BEN CHEIKH (Tunisia) confirmed that extorted confessions were invalid in Tunisian law and read out in that connection articles 172 and 174 of the Penal Code, which provided that evidence must be set aside if obtained by improper means and that persons employing such means were liable to prosecution. There were extensive safeguards for persons who had made a confession under duress, inasmuch as they could retract it either during the pre-trial proceedings or during the trial, as they wished. Nor did judges arrive at verdicts on the basis of the records alone; even if the records contained a confession, it had to be backed up by other evidence, and it was in any event the judge's personal opinion as to culpability which prevailed (Code of Criminal Procedure, arts. 150, 152 and 154).

37. Mr. MORJANE (Tunisia) said, with reference to two cases mentioned by members of the Committee, that Mr. Keila had been convicted of an offence under the ordinary law, and more precisely for having issued defamatory utterances against his country and urged fellow citizens to disobey the authorities. During his detention, he had been visited by the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms. Far from complaining about the treatment he had received in prison, he had thanked the authorities for the quality of the medical care extended to him. Only two of his requests had been refused: to be able to meet his wife without being behind bars and to have different cutlery at meal times. The delegation was still awaiting some information regarding Mr. Jellouli, but would report to the Committee on his case as soon as it arrived.

38. Mr. CHERIF (Tunisia) said that court judgements were sometimes published for what might be called "technical" reasons, in the sense that the Centre for Legal and Judicial Studies checked that they were correct with a view to their subsequent use as jurisprudence, and sometimes as an additional sanction, as was permitted by the Penal Code. In the latter case, publication was subject to judicial approval and disclosure of the offender's name was exceptional. More than 90 per cent of trials were public, but in divorce cases, for example, some hearings could be held in camera for reasons of confidentiality. In addition, juvenile offenders were, in their own interest, tried in camera. All persons suspected of torture were, of course, tried in open court in order to bring home to the public the seriousness of their offence.

39. Mr. BEN CHEIKH (Tunisia) said that under Tunisian law pre-trial detention was an altogether exceptional measure. Article 85 of the Code of Criminal Procedure permitted pre-trial detention of suspects for security reasons or to ensure the execution of a judgement or the progress of an interrogation. Suspects in such detention enjoyed sound guarantees and could appeal the decision to hold them. Those who had not previously been sentenced to more than three months' imprisonment would, failing clear evidence against them, be released within five days.

40. Mr. MORJANE (Tunisia) stressed the Tunisian authorities' resolve to improve the human rights situation in the country. In assessing that situation, account should be taken of North African countries' particular culture and, above all, of the desire of certain non-governmental organizations to exaggerate the problems and distort the facts. Thanks to action by the Tunisian Head of State, the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms had been entitled since 1996 to visit any of the country's penal institutions without prior permission.

41. Mr. CHERIF (Tunisia) confirmed that pre-trial detention was exceptional. Provisions also existed for reducing the number of persons detained after conviction: Tunisian law permitted, for example, release on bail providing the suspect had a permanent address and the release would not impede questioning, and alternative sanctions such as fines or community service. Individual and general amnesties were further possibilities.

42. Mr. MORJANE (Tunisia) said it was completely untrue that the Tunisian Government had approved an amendment to the law on the external security of the State that made contacts with agents of foreign or international organizations a crime.

43. Mr. LESSIR (Tunisia) stressed that there were no political prisoners in Tunisia, but only, as everywhere else, common law prisoners. Those who alleged that there were political detainees were merely seeking to mislead the international community.

44. Mr. NAJI (Tunisia) explained, in response to a question on female detainees in Tunisian prisons, that prisoners were segregated by sex, age, type of offence and nature of penalty. In both women's prisons and the women's sections of prisons, all the staff were themselves women.

45. Mr. CHERIF (Tunisia) said that Tunisian law on protection of mothers and children was exemplary. In the very few cases where police officers had attempted to pressure detainees' families, the culprits had very quickly found themselves the subject of legal proceedings.

46. The CHAIRMAN thanked the delegation for its answers to the Committee's questions.

47. Mr. MORJANE (Tunisia) expressed his delegation's pleasure at the opportunity afforded to it for such an interesting dialogue with the Committee and reaffirmed his Government's determination to continue its efforts to protect human rights and achieve full implementation of the Convention.

The meeting rose at 6.10 p.m.